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## CONGRESSIONAL RECORD — HOUSE

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An optional expedited adjudication procedure—a small claims court so to speak—would be available.

Commission members were not in accord on the optional deferred examination procedure which would be new in this country. There are pros and cons for the deferred system. Not all applications have the same value; not all applicants are certain that they really wish to prosecute to patent or rejection. The immediate examination requirement compels the Patent Office to handle these applications exactly as it handles those which the applicant really desires to prosecute. It also imposes the burden, as well as expense of full examination, on the applicant who is not sure which way his interests lie. A deferred system, so the proponents, will help the Patent Office solve its examination volume problem and ease the applicant's dilemma. They would start the system on a pilot basis immediately.

Others are not so sanguine about the curative powers of this system. They observe that the situation in the countries in which deferred examination exists are not truly comparable to that in the United States. Thus, they say, there is no experience bank on which we can draw. Recognizing there may be merit to the proposal and, therefore, unwilling to slam the door shut, this latter group would permit use of the deferred examination system only when an advisory body, of which I will speak shortly, finds that the Patent Office can not continue a high quality immediate examination system.

Because of this divergence, the recommendations that "standby statutory authority should be provided for optional deferred examination," reflects only a consensus of the Commission. As the Report states, the deferred system should include provisions whereby:

(1) the examination shall be deferred at the option of the applicant, exercised by his decision not to accompany the complete application with an examination fee, (Request for examination, accompanied by payment of an examination fee, may be made anytime within five years from the effective filing date of the application).

(2) a deferred application shall be promptly inspected for formal matters and then published,

(3) any party, without being required to disclose his identity, may provoke an examination upon request and payment of the fee,

(4) unless made special upon the request of any party, an application initially deferred shall be inserted in the queue of applications for examination in an order based on the date of payment of the examination fee, and,

(5) examination of pending parent or continuing applications shall not be deferred beyond the time when examination is requested of any of the parent or continuing applications.

Two other points bear noting. First, the Commission recommended positive protection against importation of products made abroad by methods which infringe on a process patented in the United States. The only protection which our laws presently provide is the application of the Tariff Act of 1930. However, this requires proof that the importation will cause substantial injury to an efficiently and economically operated domestic industry—a requirement which frequently cancels out the use of this protective device. By making the importation an act of infringement, protection would be given to the American patent owner and to those domestic concerns which are lawfully using the process patent against piracy from abroad.

Second, the Commission would create an Advisory Council to evaluate, on a continuing basis, the state of the patent system. A full report would be made quadrennially, where the merits of this proposal are self-

These are a few of the high points of the Report. No doubt some will feel that important areas have been overlooked. The limited period of the Commission's existence precluded reviewing every nook and cranny. The Commission had to take into account its composition, studies underway by other executive and legislative groups, and the potential contribution it could make in any given area. For these reasons, it did not address itself to the question of the ownership of patents resulting from Government-financed R & D—a subject of interest to many of you.

Some of the individual recommendations may displease and provoke opposition. This is to be expected. As the Greeks told us: "To seek to please all is to please none."

Some of the individual recommendations may create problems of their own. The Report does not claim to guarantee a foolproof system. Neither does the Commission lay claim to superior wisdom. It would be naive to expect that in an era of exploding technology, a panacea could be devised to cure all possible problems. The Commission sought to create a system under which the significance of the resulting problems and their drag on the Nation's growth are minimal.

I would recall that there are those who see little, if any, good in the idea of granting a limited monopoly to inventors. They endorse the position that the problems of the patent system stem from the inability to apply the conceptions of a by-gone era to the contemporary conditions under which technical knowledge is produced.

The Commission did not accept this thesis. Rather, it concluded that the patent system can be made to cope with contemporary conditions. The Report is ample evidence that this multi-faceted group, composed of representatives of almost all segments of our society, believes the patent system is worth saving and can be made to operate effectively.

President Johnson declared our patent system has been an integral part of America's development—increased productivity; stimulated economic growth; enhanced the standard of living for all our citizens; and strengthened the competitiveness of our products in world markets. But, he also cautioned that "we are living in an age of vast technological advances. We must be sure that our patent system is up to date."

The Commission's recommendations are designed to achieve this goal, to make the patent system responsive to this technological growth. They would modernize the structure of a system of proven worth so that it can meet the needs of today and the challenges of tomorrow.

But, all this can be done only by a total or systems approach. That is why I urge you to read the Report in its entirety; to evaluate the recommendations, not on the effect they would have on an individual problem, but on how well the total interrelated plan achieves the Presidential directive.

[From the New Orleans (La.) States & Item, Jan. 20, 1967]

SBA ATTORNEY SPEAKS HERE: "FIRST-TO-FILE" APPROACH URGED FOR PATENT OFFICE

(By James Hearty)

The "first-to-file" approach has been recommended to President Lyndon B. Johnson as the best method of determining priority in the issuance of patents.

"The first to take the step toward public disclosure would be rewarded; the procrastinator would not be," said Eugene J. Davidson, Falls Church, Va., assistant general counsel of the Small Business Administration, today at a luncheon session of the Aerospace Industries Association at the Roosevelt Hotel.

Davidson said most frequently the first inventor, unless he has waived his right, pre-

vails, but very often disputes arise over who is first-to-file.

"Interference proceedings, of which there has been so much complaint, are the hand-maidens of this dispute," said Davidson, a veteran government attorney and former counsel for the National Labor Relations Board.

"A by-product of the first-to-invent approach is the delay in filing applications," he said. "There is little urgency to file when you can achieve your priority even if you are not the earliest filer."

As a concomitant to this first-to-file, the commission proposed a new type of application designated as a preliminary application to secure the filing date.

"The preliminary application need not be a formal document or contain the familiar patent claims," said Davidson. "A copy of a speech or a report containing a technical description would suffice."

"The applicant would have 12 months after the filing of the preliminary application in which to file the complete application," he added.

Davidson said President Johnson cautioned that "we are living in an age of vast technological advances. We must be sure that our patent system is up to date," and Davidson said the commission's goal is to make the patent system responsive to this technical growth.

"They would modernize the structure of a system of proven worth so that it can meet the needs of today and the challenges of tomorrow," he said.

"But all this can be done only by a total or systems approach. That is why I urge you to read the report in its entirety, to evaluate the recommendations."

## HOUSE CONCURRENT RESOLUTION 3—CIA

(Mrs. KELLY (at the request of Mr. GONZALEZ) was granted permission to extend her remarks at this point in the Record and to include extraneous matter.)

Mrs. KELLY. Mr. Speaker, on July 20, 1953, I introduced House Concurrent Resolution 168, which has become the famous CIA resolution, to establish a Joint Committee on Intelligence Matters. I was the first to introduce such a resolution and I have continued to press for its adoption in each succeeding Congress. My resolution in the 90th Congress is numbered House Concurrent Resolution 3.

After I had introduced House Concurrent Resolution 168 in the 83d Congress, I persuaded my good friend, Congressman CLEMENT J. ZABLOCKI to sponsor a similar resolution. We then obtained the support of former Representative Walter Judd, and he too sponsored the creation of a Joint Committee on Intelligence Matters. Since that time, well over 100 of my colleagues have introduced similar resolutions.

However, at that time we were unsuccessful in being able to induce even one Member of the other body to join us in our efforts. In 1954, Senator MIKE MANSFIELD introduced a similar resolution in the other body. Thereafter, Senator EUGENE MCCARTHY and other of his colleagues introduced similar resolutions.

In 1955, the House Committee on Rules held hearings on this resolution and no action was taken. During the 84th Congress, the Senate Committee on Rules and Administration favorably reported a similar resolution but no action

was taken. Finally, in 1961, the House Committee on Rules held hearings on my resolution but, despite its history and the pleas of numerous Members of Congress, no action was taken.

While many hearings have been held on this resolution and while certain members of the House Committee on Rules individually see its merit and favor its enactment, the executive branch of our Government and the chairmen of the ad hoc Committees for Supervision of Intelligence Matters of the Armed Services Committees oppose it so strongly that it has never been reported to the House.

My resolution does not comprehend that the proposed committee review the day-to-day intelligence operations of the various agencies of our Government. It does, however, envision a cooperative relationship between the executive branch and the Congress, under which the Congress would exercise its traditional review of broad and long-term policy. The purpose of the joint committee would be to make continuing studies of the intelligence activities and problems relating to the gathering of intelligence affecting the national security and of its coordination and utilization by the various departments, agencies, and instrumentalities of the Government.

I expressed my detailed views in this regard to the House Committee on Rules on March 1, 1961, and append my statement of that date.

Due to the recent disclosures in the press and the various questions raised thereby, I have again requested the House Committee on Rules to give immediate consideration to my resolution and to take favorable action thereon. I do not believe that the best interests of the Congress and of the United States would be served by an investigation of the Central Intelligence Agency, especially if such investigation were to be conducted by those in Congress who have had jurisdiction over the activities of that agency since its creation. The answer is the passage of House Concurrent Resolution 3 and the creation of a Joint Committee on Intelligence Matters.

I respectfully urge those of my colleagues who are of a similar mind to make their views known to the House Committee on Rules.

STATEMENT BY HON. EDNA F. KELLY, IN SUPPORT OF HOUSE CONCURRENT RESOLUTION 3 TO ESTABLISH A JOINT COMMITTEE ON INTELLIGENCE MATTERS BEFORE THE COMMITTEE ON RULES, HOUSE OF REPRESENTATIVES, MARCH 1, 1961

Mr. Chairman and distinguished members of this committee. I am grateful to the committee for its invitation to appear here today and give testimony in support of House Concurrent Resolution 3 which I introduced.

Perhaps it is somewhat appropriate that this matter was originally scheduled for hearing before this committee on the anniversary of the birthday of our first President. This coincidence prompts me to look back to the principle upon which our country was founded and upon which our Constitution is based. I, therefore, urge each of the members of the committee, bear in mind when considering my resolution, the constitutional system of checks and balances between the executive and legislative branches of this Government.

While hindsight is infinitely clearer than foresight, when discussing House Concurrent Resolution 3, I cannot help but reflect and

think that had this resolution been adopted 8 years ago, when I first introduced it in the House, the security and prestige of the United States might have been avoided.

I cannot emphasize too strongly, however, the continuing need for the establishment of a Joint Congressional Committee on Intelligence Matters. With the high degree of world tensions, with the farflung scope of our foreign policy and other activities, when a single miscalculation may bring disaster, such a committee, as an arm of the Congress, is urgently required. The resolution calls for a continuing study, by such committee, of our Government's intelligence activities "and problems relating to the gathering of intelligence affecting the national security and of its coordination and utilization by the various departments, agencies, and instrumentalities of the Government."

As you know under the present system, the Central Intelligence Agency, which was created in 1947 is responsible only to the National Security Council. There is no supervision or control by the legislative branch. The extent of its independence is demonstrated by the lack of review of the agency's expenditures by the Congress. In short, CIA makes its own policy and procedures, spends as much money as it may require, reviews its own errors if its conscience so dictates, and selects such remedies as it deems proper to correct its errors and to improve its operations. In this system the errors are never admitted while others which must be or are obvious may, after proper preparation, be presented as premature or unexpected.

While the need for secrecy in our intelligence activities is obvious, I feel, as many of my colleagues, that until a Joint Committee on Intelligence is created, there will be no way of determining what defects in the CIA may be covered by the veil of secrecy with which it is shrouded. Our success with the Joint Committee on Atomic Energy certainly justifies the present undertaking.

Let the committee or the public consider this proposal to be quickly conceived or inspired by the recent U-2 incident, I consider it important to explore the background of this resolution.

Late in 1950, while serving on the committee which was responsible for the enactment of the Mutual Defense Assistance Control Act of 1951 (Battle Act), I came to realize the tremendous lack of knowledge, on the part of the Congress, of intelligence matters. After 2 years of periodic consultations with Members of the House, Members of the other body, and legal counsel, I introduced House Concurrent Resolution 168 in the 83d Congress. While I endeavored to convince many other Members of the House to cosponsor my resolution, my success was limited to my distinguished colleagues Mr. Zablocki (H. Con. Res. 169, 83d Cong.) and Mr. Judd (H. Con. Res. 170, 83d Cong.).

Thereafter, I continued to press for the adoption of this resolution in each succeeding Congress (84th Cong., H. Con. Res. 29; 85th Cong., H. Con. Res. 3; 86th Cong., H. Con. Res. 3; 87th Cong., H. Con. Res. 3). As time passed, other of my colleagues either introduced similar resolutions or voiced their approval.

In 1954 a similar proposal was introduced in the other body. In 1955 this committee held hearings on this same resolution and referred the matter to a subcommittee for study. Thereafter, an additional hearing was held but no further action was taken.

During the 84th Congress, the Senate Committee on Rules and Administration considered a similar resolution sponsored by 36 Members of the Senate, and reported it favorably. (S. Rept. 1670, 84th Cong., 2d sess.). In its report the committee included several germane comments of the task force of the Second Hoover Commission.

The report stated:

"The task force is concerned over the lack of adequate congressional supervision for surveillance of the stewardship of the CIA. It is making recommendations which it believes will provide the proper type of 'watchdog' commission as a means of reestablishing the relationship between the CIA and the Congress so essential and characteristic of our democratic form of government, but which was abrogated by the enactment of Public Law 110 and other statutes relating to the Agency. It would include Representatives of both Houses of Congress and of the Chief Executive. Its duties would embrace a review of the operations and effectiveness, not only of the CIA, but also of all other intelligence agencies."

The report continued:

"Although the task force has discovered no indication of abuses of powers by the CIA or other Intelligence Agencies, it nevertheless is firmly convinced, as a matter of future insurance, that some reliable, systematic review of all the agencies and their operations should be provided by congressional action as a checkrein to assure both the Congress and the people that this hub of the intelligence effort is functioning in an efficient, effective, and reasonably economical manner."

The future insurance was not provided.

If it had, would we have been stabbed in the back by the shipment of arms by Russia to Egypt during the then pending 1955 Foreign Ministers Conference? Would we have been informed on the Hungarian Revolution; the downgrading of Stalin; Iraq; the spunkies and the Cuban situation? Because we lack information these questions must be left unanswered.

All of this does not mean that I want to see the Congress go into the intelligence business. What I desire is proper and legitimate congressional control over such activities. The Hoover Commission Task Force outlined the areas of congressional interest as follows:

1. Conduct comprehensive studies of foreign intelligence activities of the United States;
2. Look for overlapping and duplication;
3. Determine whether expenditures are within budget authorizations and in keeping with the expressed intent of Congress; and
4. Consider whether any of the activities are in conflict with the foreign policy aims and programs of the United States.

With these tools the Congress would re-assume its constitutional authority and in no way jeopardize intelligence activities.

One of the principal arguments advanced against my resolution is that no other nation permits legislative control of its intelligence activities. Such system is practical for the Soviet dictatorship and even for Great Britain where the administration is a part of and responsible to Parliament. Under our Constitution, however, with delicate system of check and balances, dislocations as in the case of CIA cannot be tolerated.

Therefore, Mr. Chairman, I respectfully urge that this committee do favorably report House Concurrent Resolution 3 for action by the House.

#### PROTECTION FOR THE AMERICAN CONSUMER—AMENDMENT OF FLAMMABLE FABRICS ACT OF 1953

(Mr. STAGGERS (at the request of Mr. GONZALEZ) was granted permission to extend his remarks at this point in the Record and to include extraneous matter.)

Mr. STAGGERS. Mr. Speaker, President Johnson proposed a number of important steps to help assure the safety and equity of our citizens in their homes, as they go about their daily lives, and